

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

SHOREHAVEN, INC.

Employer

and

Case 5-RC-16020

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500, CTW, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

On August 10, 2006, the Region conducted a representation hearing in this case. The parties reached stipulations covering all litigable issues. In evidence as Board Exhibit 2 is the document titled Stipulation on Voting Eligibility which contains the parties' stipulations, a copy of which is attached. In the Stipulation, the parties proposed including the eligibility formula in the unit description. Since the parties would not remove the eligibility formula from the unit description, the case went to hearing. At hearing, the parties presented evidence and argument concerning only the one issue – inclusion of the eligibility formula in the unit description.

At hearing, the parties waived the filing of briefs and the right to request review of my decision.

The Employer is a Maryland corporation which is engaged in providing educational and residential services to individuals with mental handicaps, multiple handicaps, and autism at its places of business in Elkton, Maryland and Chesapeake City, Maryland. The Employer has a facility in

Elkton, Maryland where its administrative offices are located, as well as its

educational program. In addition, the Employer operates eight residential facilities located in Chesapeake City, Maryland and Elkton, Maryland. The parties stipulated the following employees constitute an appropriate unit for purposes of collective bargaining:

All full-time community living assistants, fill-in community living assistants (who average four (4) or more hours per week during the prior quarter and work at least half of all weeks during the prior quarter) and all full-time and regular part-time instructional aides, including day habilitative instructional aides, employed by the Employer at its Elkton, Maryland, and Chesapeake City, Maryland facilities, but excluding all maintenance employees, office clerical employees, medical support staff, nurses, professional employees, guards, and supervisors, including residential specialists, house managers, teachers and instructors, as defined by the Act.

There are approximately 69 employees in the stipulated unit. In 2003, a different union, Service Employees International Union, District 1199E-DC, in Case 5-RC-15625, petitioned-for and was certified as the collective-bargaining representative of all full-time and fill-in community living assistants employed by the Employer, and in Case 5-RC-15636, petitioned-for and was certified as the collective-bargaining representative of all full-time and regular part-time instructional aides, including day habilitative instructional aides employed by the Employer. No collective-bargaining agreements were reached in either unit. In August 2006, following the filing of the instant petition, Service Employees International Union, District 1199E-DC disclaimed interest in both bargaining units. The petitioned-for unit in this case, which the parties stipulated is an appropriate unit, combines the two units into a single unit.

The parties stipulated fill-in community living assistants who average four or more hours per week during the prior quarter and work at least half of all weeks during the prior quarter are eligible to vote. The stipulation of the parties implicitly acknowledges Board representation case law regarding voter eligibility. I find the standard adopted by the parties comports with Board law regarding assuring an equitable formula and therefore accept the voter eligibility formula. However, contrary to the wishes of the parties, I find that the voter eligibility formula is not

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properly a part of the unit description, and accordingly it will not be included in the unit description.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. As stipulated by the parties, the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, Service Employees International Union, Local 500, CTW, CLC, is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated that the Employer, Shorehaven, Inc., a Maryland corporation engaged in providing educational and residential services to individuals with mental handicaps, multiple handicaps, and autism at its places of business in Elkton, Maryland and Chesapeake City, Maryland. The Employer has a facility in Elkton, Maryland where its administrative offices are located, as well as its educational program. In addition, the Employer operates eight residential facilities located in Chesapeake City, Maryland and Elkton, Maryland. During the past twelve months, a representative period, the Employer derived gross revenues in excess of \$250,000 and has purchased and received at its Elkton, Maryland location materials and goods valued in excess of \$5,000 directly from points outside the State of Maryland.
6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time community living assistants, regular part-time fill-in community living assistants and all full-time and regular part-time instructional aides, including day habilitative instructional aides, employed by the Employer at its Elkton, Maryland, and Chesapeake City, Maryland facilities, but excluding all maintenance employees, office clerical employees, medical support staff, nurses, professional employees, guards, and supervisors, including residential specialists, house managers, teachers and instructors, as defined by the Act.

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7. Fill-in community living assistants who average four or more hours per week during the prior quarter and work at least half of all weeks during the prior quarter are eligible to vote.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 500, CTW, CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit, *except for fill-in community living assistants*, who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. *Fill-in community living assistants who average four or more hours per week during the prior quarter and work at least half of all weeks during the prior quarter are eligible to vote.* Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, ^{8th} Floor, Baltimore, MD 21202, on or before **August 21, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 9622198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to

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12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

D. Notice of Electronic Filing

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., E.D.T. on **August 28, 2006**. The request may not be filed by facsimile.

(SEAL)

/s/Wayne R. Gold

Wayne R. Gold, Regional Director National
Labor Relations Board, Region 5
103 S. Gay Street
Baltimore, MD 21202

Dated: August 14, 2006